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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **DAVID M. McDONOUGH,**

Petitioner,

14
15 v.

16 **JAMES A. YATES, Warden,**

17 Respondent.
18

CV 07-2469 MMC

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19
20 Respondent James A. Yates, Warden, Pleasant Valley State Prison, hereby provides this
21 Answer to the Petition for Writ of Habeas Corpus, upon the Court's Order to Show Cause:

22 (1) Pursuant to a negotiated plea agreement, petitioner pled guilty to five counts of lewd
23 acts upon a child under the age of fourteen in violation California Penal Code section 288(a) and two
24 counts of forcible lewd acts in violation of California Penal Codes section 288(b). CT 24–28, 32,
25 43–45. In accordance with the plea agreement, the trial court sentenced petitioner to a 28 year
26 prison term. The court imposed a 15 percent limitation on presentence conduct credit pursuant to
27 California Penal Code section 2933.1 and awarded credit for time served of 386 actual days and 57
28 days of presentence-conduct credit, for a total of 443 days. CT 43–45. Approximately 10 months

1 after he was sentenced, petitioner filed a motion in the superior court to strike the 15 percent
2 limitation on presentence conduct credits insofar as it applied to counts 1 through 4, and 7. CT
3 1-19. The superior court granted the motion and awarded an additional 135 days of presentence
4 conduct credit. CT 98, 100. The People appealed. The California Court of Appeal reversed the
5 superior court's ruling, and imposed the original 15 percent limitation on petitioner's presentence
6 conduct credits. Ex. 6. The California Supreme Court denied review. Ex. 9.

7 (2) Petitioner has exhausted his state court remedies. The petition is timely filed.

8 (3) Petitioner was not denied his constitutional rights in any respect. Specifically,
9 respondent asserts: the section 2933.1 limitation on presentence conduct credit does not violate the
10 Ex Post Facto Clause

11 (4) Respondent denies each and every other allegation of the petition.

12 (5) Pursuant to this court's order, and in compliance with Rule 5 of the rules governing
13 28 U.S.C. § 2254 cases, respondent is lodging copies of all relevant records with the court as
14 exhibits 1 through 19.

15 Respondent respectfully requests that the instant petition be denied.

16 Dated: December 26, 2007

17 Respectfully submitted,

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24 /s/ William Kuimelis

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